



# COVID-19 Legal Issues

A Webinar for Organizations  
Serving Women & Girls

**In Partnership with the UPS Foundation**



## Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

## Client Eligibility & Additional Resources

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
  - ✓ Be a 501(c)(3) nonprofit.
  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
  
- Free resources for Georgia nonprofits available online
  - ✓ Podcasts
  - ✓ Articles
  - ✓ Webcasts
  - ✓ COVID-19 legal issues

## Legal Notice & Disclaimer

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- ✓ The information provided is based on Georgia law, unless specifically stated otherwise.
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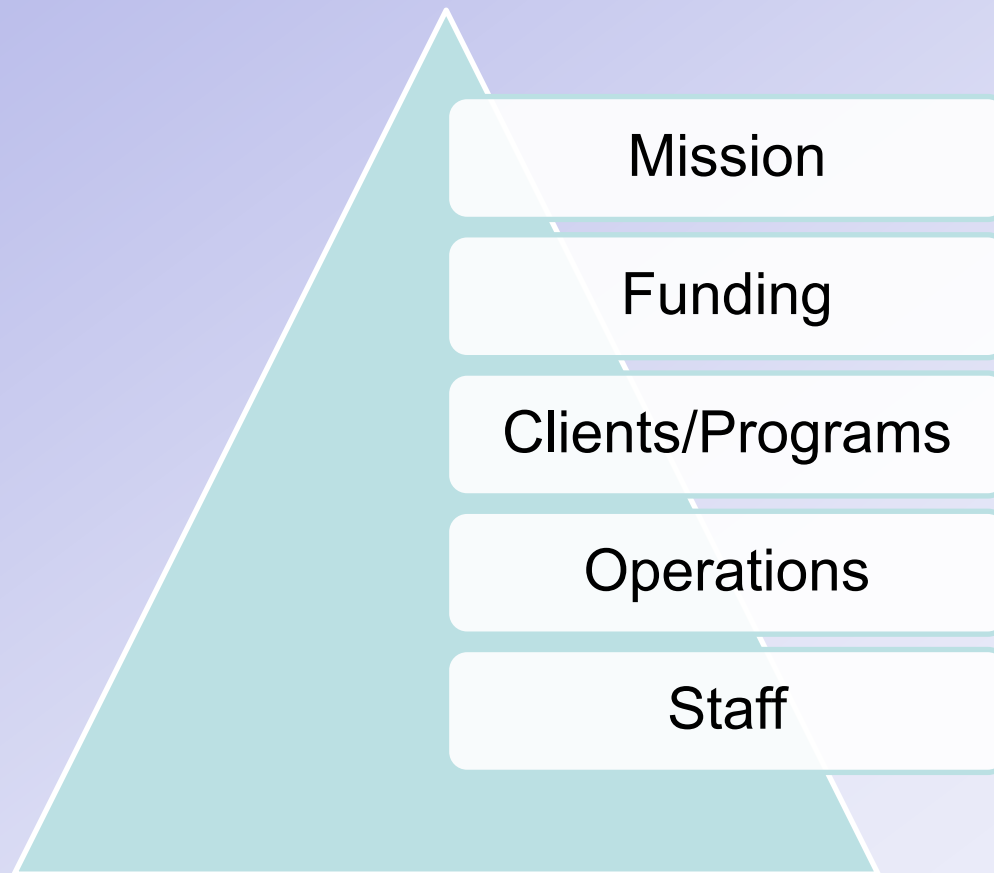


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***PART I:***  
***Employment***  
***Lori J. Shapiro***  
***Employment Counsel***  
**PBPA**

## What Are Nonprofits Thinking About...



## GIMME HELP SHELTER

- Gimme Help is a shelter for homeless women and girls that employs 25 employees, including some administrative staff who are working from home. Most of the workforce remains at the shelter.
- Gimme Help is contemplating bringing all employees back to its facility. What should the organization be considering?

## Physical Space and Safety

- What processes need to be changed?
  - Safety procedures are needed in accordance with CDC, Georgia Department of Health and Occupational Safety and Health Administration Guidelines:
    - » Handwashing
    - » Cleaning surfaces
    - » masks and other PPE
    - » Social distancing protocols
    - » Employee screening
- Have you issued guidance to employees regarding protocol for safety?



## GIMME HELP SHELTER

- An employee who works in the shelter indicates that she has been exposed to a family member with COVID-19.
- This employee has not been in the workplace since the exposure.
- What should the organization do?

## Potential Exposure to COVID-19

- Clear plan for claims of exposure or positive tests
  - ✓ Employers can require employees with symptoms or exposure to stay home. Review CDC recommendations to determine timing for return to work.

## Was There Exposure At Work?

- Worker's Compensation – not likely; must prove caused by workplace exposure; but file claim if employee claims exposure occurred in workplace
- Can an employer share information about an employee who indicates that he or she has symptoms or has tested positive?
  - ✓ Share general information about potential exposure but maintain privacy/confidentiality of employee's identity; No names or identifying information

## Are Employees Able to Work from Home?

➤ If so, consider:

- ✓ How are you tracking hours?
- ✓ What equipment do they need?
- ✓ How is confidential information being protected?
- ✓ Should you have a telework policy that addresses employment policies, schedules, equipment, temporary nature of telework, etc.

## New Family and Sick Leave Requirements

- The Families First Coronavirus Response Act (FFCRA)
  - ✓ New family leave and sick leave requirements
  - ✓ Unpaid and paid leave entitlements
- Mandatory Postings – available on DOL website:  
<https://www.dol.gov/agencies/pandemic>

## FFCRA Paid Sick Leave

- Up to 80 hours of paid sick leave for any employee:
1. subject to a federal, state or local quarantine or isolation order related to COVID-19;
  2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
  3. experiencing COVID-19 symptoms and seeking medical diagnosis;
  4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
  5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
  6. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

1-3: regular rate capped at \$511 per day (\$5110 total)

4-6: regular rate capped at \$200 per day (\$2,000 total)

## Organization Policies

- Requiring use of paid leave time available?  
(not for FFCRA leaves)
- Pay for leaves not previously paid
- Deviations from prior policies during crisis?
  - ✓ Absences
  - ✓ Discipline

**BE CONSISTENT!!!**

## GIMME HELP SHELTER

- Several employees have approached the Executive Director about their elementary school children who are attending online school at home. They have questions about balancing work and the need to supervise and care for their children.
- What should the organization do?



## FFCRA Family Leave

Leave to care for a child of the employee who is under 18 years old if the school or place of care has been closed, or the childcare provider is unavailable due to the public health emergency.

- Available to employees who have been employed for 30 days or more
- 2 weeks unpaid; 10 weeks paid at not less than 2/3 regular rate based on normal hours (capped at \$200 per week; \$10,000 total)

## GIMME HELP SHELTER

- PPP funds have run out and fundraising is slower than usual. Gimme Help is considering whether it needs to make any changes in its workforce.
- What should the organization consider?

## Considerations Before Reducing Hours or Jobs

- What action are you contemplating?
  - ✓ Reductions in hours or pay
  - ✓ Job Changes
  - ✓ Layoffs or other workforce reductions
- **MAKE A PLAN AND PREPARE**
  - ✓ Use objective criteria: NEVER use personal characteristics such as race, gender, religion, color, national origin, sexual orientation, gender identity, pregnancy or age

## The Fair Labor Standards Act

- Employees are subject to minimum wage and overtime requirements (Nonexempt) **unless** they are exempt
- Exemption applies only if the position satisfies all of the requirements for pay and duties.

Changes to duties or pay may result in change of status! Also, check on benefits.

## Position Elimination

- If you are eliminating positions, either on a temporary or permanent basis, consider:
  - ✓ What information/documents you need for the transition of duties (i.e. passwords, account access).
  - ✓ What, if any, separation benefits will be provided and if so, whether to require a release of legal claims.
  - ✓ Whether an unemployment compensation obligation is triggered.

## Georgia Unemployment Law

- Are employees experiencing reduced hours or temporary layoff?
  - ✓ Partial unemployment claims
    - Applies to part-time or full-time employees who have reduced hours
    - Filed by the employer weekly
- Position Elimination (no expected return) – subject to regular unemployment rules (Separation Notice)

## GET HELP

Contact your PBPA attorney for additional information and assistance.

***Next***  
***Part II: Contracts***

*Part II:*  
*Contracts & Leases*  
*Justine Cowan*  
*Employment Counsel*  
**PBPA**



**COVID-19**  
**Legal Issues**

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## Contracts & Leases

- Contracts
  - ✓ Events
  - ✓ Other Contracts
  
- Leases
  - ✓ Residential
  - ✓ Commercial

## Key Term: *Force Majeure*

- *Superior force* in French
- A legal concept that applies to unpredictable events (natural disasters, war, disease, or certain government actions)
- May excuse contractual obligations due to unforeseeable circumstances beyond a party's control.

## Event Contracts – Executed *Pre-COVID*

- Contract language governs
  - ✓ Look for a *force majeure* clause with relevant terms such as pandemic, disease, government action, etc.
  - ✓ Termination or cancellation clause
- Meet obligations (notice, mitigation, etc.)
- No contract – apply principles of equity
- Remedy
  - ✓ Look to the contract
  - ✓ Consider being flexible in the time of COVID-19
  - ✓ PBPA attorneys can help you negotiate the best result

## Event Contracts – Executed *Post-COVID Outbreak*

- COVID-19 AND other diseases are no longer *unforeseeable*
  - ✓ Review *force majeure* and termination clauses
  - ✓ Add special provisions re:
    - Safety protocols (gov't standard or something else?)
    - Liability
- Insurance
- Get attorney review for:
  - ✓ Contracts that might need to be re-negotiated
  - ✓ New contracts

## Events – Liability Issues

### ➤ Georgia’s Immunity Statute

- ✓ Immunity unless actions “showed gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.”
- ✓ Health care providers, nonprofits, board members, employees and independent contractors are covered under the Act.
- ✓ August 7, 2020 through July 14, 2021 are covered.

### ➤ No bright lines for protected conduct – best practice is to follow local, state and federal safety guidelines

## Entry to Events

### WARNING

**Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with contracting COVID-19 at public gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, by the individual or entity of the premises.**

(to be placed on a receipt, proof of purchase for entry, electronic or paper ticket or wristband in at least ten-point Arial font placed apart from any other text)

## Entry into Premises

### WARNING

**Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.**

(to be posted at the point of entry as a sign in at least one-inch Arial font placed apart from any other text)

Click [HERE](#) for a template.

## Other Contracts

- Same principles apply
- Take stock of your contracts
  - ✓ Oral agreements
  - ✓ Agreements with program participants
  - ✓ Vendors
  - ✓ Volunteers
  - ✓ Other contracts
- Reach out to your PBPA attorney



## Tenants

- September 4, 2020, the Centers for Disease Control published an Eviction Moratorium, effective until December 31, 2020
- Landlord: Applies to any person with “with a legal right to pursue eviction or possessory action”
- All rents remain due
- Can still evict *for cause*
- No court has ruled that CDC does NOT have the authority and judges are enforcing it.

## Declaration

- To qualify for the protections, renters must provide a declaration that they:
  - ✓ Have lost “substantial” income during the pandemic;
  - ✓ Expect to make no more than \$99,000 in 2020 or qualified to receive a stimulus check;
  - ✓ Are making their “best efforts” to make partial rent payments and get government assistance;
  - ✓ And that an eviction would force them into homelessness.

**[WWW.HOMERENTERDECLARATION.ORG](http://WWW.HOMERENTERDECLARATION.ORG)**

## Commercial Lease Restructuring

- Landlords may be flexible
- Get it in writing
- Reach out to your PBPA attorney to negotiate more favorable terms

## Summary

### ➤ Contracts

- ✓ This is the time to take stock of your contracts and make necessary revisions

### ➤ Leases

- ✓ Residential: consider protections for tenants with certain limitations
- ✓ Commercial: consider negotiating more favorable terms

## **For More Information:**

Contact your PBPA attorney for additional information and assistance.

***Next***

***Part III: Board Governance***

***Part III:  
Board Governance  
Rachel Epps Spears  
Executive Director  
PBPA***



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## **What is the role of a nonprofit board of directors?**

- ✓ Ultimate responsibility for directing the affairs of the nonprofit in accordance with its mission
- ✓ Delegates responsibility for managing the day-to-day operations
- ✓ But fiduciary duties, including duty of care, cannot be delegated
  - ✓ Board retains oversight responsibility, including financial oversight
  - ✓ Board should ensure legal and ethical integrity

## **How does the role change in a pandemic?**

- ✓ As activities of pivot to respond to the crisis, board should make sure that the nonprofit stays true to its mission
- ✓ Board must maintain its oversight responsibility, even if governance looks different
- ✓ While staff will continue with day-to-day management, board should ensure compliance with laws and values



## **When should the ED get the board involved?**

- ✓ Significant changes in programs
- ✓ Furloughs, layoffs
- ✓ Loans
- ✓ Significant financial decisions
- ✓ Check your bylaws and seek legal advice!

## **Financial Oversight by Board**

- Regular financial reporting
- Changes to budget
- Tapping reserves or endowment

## **Planning role of board**

- Review strategic plan and revise as needed
- Anticipate long-term effects of pandemic and downturn
- Work with staff to prepare for possible scenarios

## How does governing change?

- Virtual meetings
  - ✓ Notice requirements
  - ✓ Quorum
  - ✓ Minutes
  - ✓ Open Meetings
- Voting without a meeting
- Check your bylaws!

## How to keep board members engaged?

- Communicate with board
- Be clear about what you need them to do
- Get leadership from board chair

**Thanks for joining us!**

More information about PBPA's services and  
free COVID-19 legal resources  
are available at:  
[www.pbpatl.org](http://www.pbpatl.org)